COURT NO.2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 364 of 2002

The Oriental Insurance Company Ltd. … **Appellant.**

Versus

Km. Ranjana
and others. … **Respondents.**

Coram : Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

Admit.

2. This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 ***(in short the Act)*** against the judgment and Award, dated 29-9-2002, passed in M.A.C.T. Petition No. 42 of 2001, Km. Ranjana and 3 others Vs. Kewal Singh Negi and 2 others, by the Motor Accident Claims Tribunal/ District Judge, Chamoli ***(hereinafter referred to as the Tribunal)***, whereby the learned Tribunal has awarded a sum of Rs. 3,24,,000/- along with interest @ 9% per annum in favour of the claimant-respondent no. 1 to 4 as against the Opposite Party No.3-appellant. Aggrieved, the Insurance Company has come up in appeal with a prayer to set aside the impugned judgment and award mainly on the ground of income of deceased and quantum of compensation and it has been contended the findings of the learned Tribunal are not based on evidence on record.

3 We have heard learned counsel for the appellant Sri Pankaj Purohit as well as learned counsel for the claimant-respondents Sri Anil Dobhal and have carefully gone through the entire material available on record including the impugned judgment and award.

4. Brief facts giving rise to the present appeal are that Smt. Usha Panwar ***(the deceased)*** died as a result of injuries sustained by her in a motor accident occurred on 26.2.2001 involving vehicle No. U.P. 07C-5137 belonging to O.P.No.1 Kewal Singh Negi, driven rashly and negligently by its driver, O.P.No.2 Shivraj Singh and insured with the O.P.-appellant. The motor accident took place at the place Jalgwarh Pakhi between Joshimath and Pakhari motor road with the result the deceased sustained grievous injuries and he died while he was being rushed to the hospital. She was doing agriculture etc. and was aged 46 years. Her income was about 5,000/- per month. The owner and driver of the vehicle contested the petition by filing separate written statement. It has been alleged that the driver was holding a valid driving licence and the vehicle was duly insured with the appellant. It has also been stated that the accident was not the result of rash and negligent driving, but was caused due to blind curve and oil being spread over the road. Insurance Company-appellant also contested the claim petition by filing its written statement on the ground that the claimants/owner are required to furnish necessary papers relating to registration, permit, fitness certificate, Insurance Policy etc.

5. The learned Tribunal framed four Issues in the case. **Issue No.1** related to rash and negligent driving by the driver of the offending bus. **Issue No.2** related to the road being zig-zag at the place of accident having curves and oil being spread over the road. **Issue No. 3** related to holding of valid driving licence and other relevant papers by the insured/owner. **Issue No. 4** related to compensation and relief. Learned Tribunal after considering the evidence on record, took issue nos. 1 and 2 together and found that the accident in question was result of rash and negligent driving by the driver of the vehicle resulting into injuries and

consequent death of the deceased. On Issue No.3, it has been found that permit 23-C, Insurance Policy, 24-C and driving licence, 25-C are on record, and the vehicle was duly insured with the appellant, therefore, the appellant-insurance company is liable to pay the compensation. On Issue No.4 the learned Tribunal came to the conclusion that in the circumstances of the case, the monthly income of the deceased can be taken Rs. 3000/- and out of this amount, she would have spent 1/3rd toward personal expenses. Thus, the loss of dependency has been determined at Rs. 2000/- per month. The deceased was aged 44 years at the time of her death, therefore, multiplier of **13** has been applied to assess the just amount of compensation. Ultimately, the learned Tribunal has awarded amount of Rs. 3,24,000/- along with interest in favour of the claimants and against the insurance company-appellant, as mentioned earlier.

6. The appellant has assailed the impugned judgment and award only on the ground of income of the deceased and quantum of award and the learned counsel has pressed the present appeal only on these grounds.

7. It is most significant to mention here that the grounds of challenge available to the insurer-appellant have been enumerated in sub-Section (2) of Section 149 of the Act and no other ground is available to the Insurance Company. No permission under Section 170 of the Act has been sought before and granted by the Tribunal to the appellant to contest the case on the grounds available to the insured or the person against whom claim has been preferred. Section 170 of the Motor Vehicles Act deals with impleadment of insurer in certain cases. On a careful perusal of the said provisions of law, we are not inclined to accept the contentions raised on behalf of the insurer –appellant, because under the Act, the insurer has no right to challenge the judgment and award passed by the learned Tribunal except on the grounds as

enumerated under sub-Section (2) of Section 149 of the Motor Vehicles Act, 1988. The law provides that appeal by the insurer can be filed on limited grounds and the grounds of challenge cannot be enlarged. We are fortified in our view by the Apex Court judgment in the Case of ***"National Insurance Company Ltd. Chandigarh Vs. Nicolletta Rohtagi and other" [(2002)] 7, Supreme Court Cases, 456].*** In that case, it has been observed by the Apex Court that ***"even if no appeal is preferred under Section 173 of 1988 Act by an insured against the award of a Tribunal, it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regard negligence or contributory negligence of the offending vehicle".*** Thus , in view of the law laid down by the Apex Court reported in ***(2002)7, S.C.C. 456 (Supra),*** which is fully applicable in the present appeal, none of the contentions raised on behalf of the appellant is tenable and has to be ignored outright.

8. Ultimately, we are of the view that the present appeal is devoid of merit and must fail.

9. The appeal is dismissed. The impugned judgment and award is upheld. No order as to costs.

10. The amount in deposit with this Court be remitted to the Motor Accident Claims Tribunal concerned.

26-08-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**
RCP